

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.287 OF 2006

In

SUIT NO.1098 OF 1988

Mr.Shyam H. Gurbaxani : Plaintiff

V/s.

Mr.Moti H. Gurbaxani & Ors. : Defendants

And

Ranjit N. Sitlani & Anr. : Respondents

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Ms Nadia Bhatia i/b. Prem S. Gidwani for the plaintiff.

None present for the defendants.

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CORAM : A.M. KHANWILKAR, J.

DATE : MARCH 14, 2007.

P.C.

Heard the counsel for the applicant-plaintiff.

2. As there is a delay of eight years and 32 days in taking out the Chamber Summons and to set aside abatement of the suit as against the defendant no.5, it was expected from the applicant to offer satisfactory explanation for condoning such long delay. In the affidavit-in-support of this Chamber Summons, all that is mentioned is that the

applicant became aware about the factum of death of defendant no.5 when he had occasion to read the written statement served on him. The date on which he became aware about that fact is not stated in the affidavit at all. As the written statement is dated 29.4.2004, obviously, it must have been served on the applicant soon thereafter. In that sense, it is possible that the applicant must have had occasion to know the fact of death of the defendant no.5 in 2004 itself. The present application is filed in March 2006. In the fact situation of the present case, the inevitable conclusion is that no satisfactory explanation is offered for excusing such long delay of eight years and 32 days.

3. Hence, the Chamber Summons is dismissed.

A.M. KHANWILKAR, J.